S.B. CIVIL MISC. APPEAL NO. 948/2007
(National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala & ors.)

Date of Order :: 13th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Sanjeev Johari for the appellant

By way of this appeal, the insurer of the vehicle involved in accident seeks to question the award dated 18.11.2006 made by the Motor Accidents Claims Tribunal, Ratangarh in Claim Case No.89/2004 awarding compensation in the sum of Rs.4,03,650/- to the injured claimant, in relation to the finding on issue No.4 whereby the Tribunal has rejected its contention for exoneration on the ground of violation of policy condition because driving licence of the driver of the offending vehicle was found not renewed on the date of accident; and in relation to the finding on issue No.3 on quantification of compensation.

On 11.06.2004 at about 8.30 p.m. in the city of Ratangarh on the road from Ghantaghar to PWD Rest House the claimant, about 53 years of age and serving as cashier in government employment earning monthly salary of Rs.10,448/-, while riding his motorcycle sustained bodily injuries on being hit by a truck bearing registration No.RJ 14 G

2223; the truck ran over and crushed his right leg that was required to be amputated below the knee. In the claim for compensation made by the injured-claimant against driver, owner, and insurer of the offending truck, the driver and owner while stating general denial of claim averments asserted the fault of the claimant-motorcyclist for the accident. The insurer, present appellant, while denying the claim averments put to contention the quantum of compensation claimed and also submitted that the claimant was not conversant with motorcycle driving and the truck driver was not holding valid driving licence.

After framing of relevant issues and taking evidence led by the parties, the Tribunal observed in issue No.1 that the claimant has established that the accident occurred for rash and negligent wrong side driving of the offending truck and then, the truck driver was not produced in evidence. The Tribunal, after holding that the accident occurred for rash and negligent driving of the truck, found that the truck was being driven at the directions and in the employment of its owner.

In issue No.4, the Tribunal referred to the oral and documentary evidence produced on record and found that the driving licence of the truck driver was valid from 15.12.1997 to 14.12.2000 and from 29.12.2000 to 14.12.2003 but thereafter was renewed on 16.05.2005 though the accident occurred on

11.06.2004. The Tribunal observed that the driver was qualified to drive Heavy Transport Vehicle from 15.12.1997 to 14.12.2003 and his such driving licence has been renewed from 16.05.2005 to 15.05.2008 and merely for the gap in renewal, the driver could not be taken incompetent to drive the vehicle. With these observations and findings, the Tribunal decided issue No. 4 against the appellant-insurer.

On quantification of compensation, the Tribunal referred to 50% loss of earning capacity recognised by the Workmen's Compensation Act for amputation of a leg below the knee. The Tribunal also referred to the present service of the claimant and his imminent retirement at the age of 60 years; and taking his capacity to earn after retirement at Rs.3,000/- per month, deducting one-third wherefrom, and with application of multiplier of 5 assessed the loss of income at Rs.60,000/- (50% of 2000x12x5). The Tribunal also allowed Rs.2,100/- for seven days' hospitalisation; Rs.6,000/- towards transportation; Rs.66,000/- towards one permanent attendant; Rs.29,550/- towards bills of medical expenditure and Rs.40,000/- towards artificial limb required to be used by the claimant. The Tribunal further allowed Rs.1,00,000/- towards mental agony related with amputation and another Rs.1,00,000/- towards physical pain. In this manner, the Tribunal awarded compensation in the sum of Rs.4,03,650/-

and allowed interest at the rate of 6% per annum from the date of filing of claim application with stipulation of rate of interest at 9% per annum for making payment after two months of the award.

Having heard learned counsel for the appellant and having examined the award in its totality, this Court is of opinion that the contention relating to exoneration as suggested by the appellant-insurer remains bereft of substance; and the quantum of compensation awarded by the Tribunal, in the overall circumstances of the case, cannot be said to be exorbitant or too excessive so as to warrant interference in appeal at the instance of the insurer.

The evidence led by the insurer has been analysed by the Tribunal in issue No.4 where only the so-called gap in renewal of driving licence was put forward by the insurer as the ground for its exoneration on alleged breach of policy conditions. It is evident that even if the evidence led by the insurer is taken on its face value, the same does not answer to the requirements of law as laid down and explained by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Ors.: (2004) 3 SCC 297 that,-

> "110 (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding

> liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

and further requiring that,-

> "110 (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence (s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them."

It does not appear that the insurer established that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the policy conditions regarding use of the vehicle by a duly licenced driver or by a person who was not disqualified to drive such vehicle. Further, there is no evidence to suggest that want of such licence or its renewal was the main or contributory cause to the accident. In this view of the matter, it cannot be said that the insurer has been able to establish the conditions requisite for its exoneration; and mere proof of the fact that there was a gap in renewal of driving licence cannot be taken sufficient to

rule in favour of the insurer that insured was guilty of negligence and without exercise of reasonable care handed over vehicle to be driven by a person who was not duly licensed or was disqualified to drive.

Learned counsel has referred to the decision of the Hon’ble Supreme Court in National Insurance Co. Ltd. Vs. Kusum Rai and others: (2006) 4 SCC 250 to submit that violation of policy conditions by driving of the vehicle by a person not holding a valid driving licence is a defence that could be raised by the insurer and it was the duty of the owner to verify before handing over the vehicle the fact as to whether the driver possesses valid driving licence or not. The submission is misplaced and lacks merit. In Kusum Rai's case (supra), the Hon'ble Supreme Court has not stated the law in any terms different from the law declared in Swarn Singh's case and other directions were issued only in view of peculiar facts and circumstances of the case. The observations in Kusum Rai's case that owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not have no application to the facts of the present case inasmuch as such a question upon and in relation to the owner would have arisen only if the appellant-insurer had discharged its initial burden of establishing want of reasonable care and of breach on the part

of insured. The initial burden having not been discharged, the contentions sought to be raised by the learned counsel are of little avail.

So far the quantum of compensation is concerned, the injuries sustained in the accident have led to amputation of leg of the claimant below knee and obviously his prospects of earning further after retirement have suffered serious set back and the amount of Rs.60,000/-allowed on that score appears to be rather on the lower side. The Tribunal has not allowed any amount towards special diets and other related expenditure and has merely allowed Rs.2,100/- for seven days hospitalisation. The Tribunal has further not allowed any amount towards six months' absence from duty. Even if the claimant did not remain without pay, the loss of leave account could not have been ignored altogether. The amount of Rs.66,000/- for a permanent attendant does not appear highly excessive and the amount of Rs.40,000/- towards artificial limb cannot be said to be wholly unjustified. In the aforesaid view of matter, the amount of Rs.2,00,000/- allowed by the Tribunal towards non-pecuniary loss does not appear leading to excessive compensation.

In the ultimate analysis, this Court is satisfied that the quantum of compensation as awarded by the Tribunal in this case cannot be said to be exorbitant; and looking to the overall

circumstances, even the stipulation regarding enhanced rate of interest at 9% per annum for payment after two months, though not approved as such, does not appear calling for interference in this appeal at the instance of the insurer.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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